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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,752	02/25/2002	Michael S. Bottom	99-431.1	6190
719	7590	11/20/2003	EXAMINER	
CATERPILLAR INC. 100 N.E. ADAMS STREET PATENT DEPT. PEORIA, IL 616296490			BELLINGER, JASON R	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 11/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/082,752	BOTTOM ET AL.
	Examiner	Art Unit
	Jason R Bellinger	3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 02 September 2003.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-37 and 45-58 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 45-52 is/are allowed.

6) Claim(s) 1-4, 6, 7, 15-21, 23, 24, 32-37, 53, 54 and 56-58 is/are rejected.

7) Claim(s) 5, 8-14, 22, 25-31, 55 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_ .

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 6-7, 18-21, 23-24, 53-54, and 56-58 are rejected under 35 U.S.C. 102(b) as being anticipated by Maguire. Maguire shows a track joint assembly adapted to connect a track "chain" together. The track "chain" has first and second structures (12 & 14, respectively). The joint assembly includes a track pin 20 extending between the first and second structures (12 & 14, respectively), and an insert 36 that surrounds a portion of the track pin 20; the insert 36 being free-floating between the track pin 20 and at least one of the first and second structures (12 & 14, respectively).

The insert 36 includes at least one crown shaped surface thereon (namely the upper surface portion of the load ring 46). The crown shaped surface is located at a substantially central location along the outer surface of the insert 36. One of the first and second structures (12 & 14, respectively) includes an inner surface 34 to facilitate sliding rotation with the crown shaped surface of the insert 36. The insert 36 is free-floatingly positioned between the first structure 12 and the track pin 20, and includes a sleeve 30 positioned within the first structure 12 with an inner surface to facilitate sliding rotation with the crown shaped surface of the insert 36.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 15-17, 32-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maguire. Maguire contains all of the limitations set forth in paragraph 2 above, but does not specify the dimensional ratios of the insert. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to produce an insert having dimensional ratios suitable for the insert to operate properly in the application the insert was designed for, to prevent undue stress on the insert and thus preventing premature failure of the insert.

***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1, 15, 45, and 53 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,485,116 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because all of the limitations set forth in the instant claims are included in the patented claims. However, the instant claims include less details than the patented claims, and are thus broader in scope than the patented claims; and it is therefore obvious that the Applicant is claiming the same invention but in broader terms. See *In re Vogel*, 422 F.2d 438,164 USPQ 619 (CCPA 1970).

***Allowable Subject Matter***

7. Claims 45-52 have been found to be allowable over the prior art.

8. Claims 5, 8-14, 22, 25-31, and 55 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

9. Applicant's arguments with respect to claims 1-37, 45-58 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references are considered to show track joint assemblies having an insert that is positioned to be free-floating between the track pin and another structure of the assembly. For example, Haslett shows a joint assembly of the type described above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason R Bellinger whose telephone number is 703-308-6298. The examiner can normally be reached on Mon - Thurs (9:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Morano can be reached on 703-308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Jason R Bellinger  
Examiner  
Art Unit 3617

*juw3*  
jrb



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